

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
JOHNSON MANUFACTURING)
COMPANY, INC.,)

Appellant,)

vs.)

PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)

Respondent.)

PCHB Nos. 168, 182, 198 and 210

FINDINGS OF FACT,
CONCLUSIONS AND INTERIM ORDER

This matter, the appeals of civil penalties totaling \$5,500.00 for 22 alleged odor bearing violations of respondent's Regulation I, came before all members of the Pollution Control Hearings Board (Walt Woodward, presiding) in a formal hearing which commenced at 9:30 a.m., November 27, 1972 in the Department of Public Utilities Auditorium, Tacoma, and which concluded at 3:00 p.m. on November 28, 1972.

Appellant appeared through its attorney, Frederick P. Smith, and respondent through its counsel, Keith D. McGoffin. Eugene Barker,

1 Olympia court reporter, recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were offered and
3 admitted. Counsel made closing arguments.

4 After reviewing the transcript, examining exhibits and considering
5 arguments of counsel, the Pollution Control Hearings Board makes these

6 FINDINGS OF FACT

7 I.

8 Appellant conducts a rendering operation at 9119 Fruitland Avenue,
9 Puyallup, Pierce County. It uses animal offal in a heating process
10 which produces tallow for export to Japan. The firm, in business at that
11 location since 1925, was acquired by its present owners in 1970. They
12 have a lease on the plant which expires in December, 1973. The plant's
13 location, in a draw near some hills on the west side of Puyallup,
14 originally was in a sparsely settled wooded area; in the passing years,
15 the area has become residential; homes have been built close to the
16 plant and an elementary public school is located some 500 yards north of
17 the plant.

18 II.

19 There always has been a community odor associated with the plant.
20 Under the former ownership, when this odor became overbearing to nearby
21 residents, processing of offal was curtailed or ceased. Under the new
22 ownership, production was doubled to the processing of about 35,000
23 pounds of offal a day.

24 III.

25 Beginning in January, 1971, respondents began to receive an
26 increasing number of complaints from nearby residents concerning odors

27 FINDINGS OF FACT, CONCLUSIONS
AND INTERIM ORDER

1 emanating from the plant. At the request of respondent, appellant, in
2 April, 1971, submitted a schedule for the installation of an odor
3 reducing scrubber system with an original compliance date of September 1,
4 1972, later extended to December 1, 1972. In subsequent discussions
5 with respondent, appellant agreed that the ultimate solution of the
6 problem was removal of the operation to a new plant equipped with
7 acceptable odor reduction devices, on property of the Port of Tacoma.
8 Appellant took steps to accomplish this move prior to expiration of its
9 Puyallup location lease in December, 1973. Installation of odor
10 reducing equipment at the Puyallup site, however, was not activated
11 immediately.

12 IV.

13 During the months of July, August, September and October, 1972,
14 persons living near the plant found odors emanating from the plant to
15 be "nauseating," "putrid," "like badly burned flesh," "obnoxious,"
16 "sickening," "very difficult to live with," "suffocating," "heavy and
17 greasy," or impossible "to live with another summer." They complained
18 regularly, often daily, and sometimes several times a day to respondent.
19 Despite the warm summer weather, they closed doors and windows in their
20 homes to shut out the odor, thus making it difficult to sleep at night.

21 V.

22 Responding to these civilian complaints, respondent dispatched four
23 of its inspectors to the area on various days and nights during the
24 months of July, August, September and October, 1972. These inspectors
25 found the odor from the plant to be "a dead animal smell I couldn't
26

1 stand for any length of time," "a rotten smell . . . I wished I was
2 some place else," "an odor strong enough to want to get away from," and
3 "strong enough to cause one to avoid it."

4 VI.

5 Section 1.01 of respondent's Regulation I declares that the public
6 policy of respondent includes the fostering of the "comfort" of the
7 inhabitants of its jurisdictional area which embraces Pierce County.
8 Section 9.12(a) of respondent's Regulation I requires the installation
9 of "effective control apparatus . . . to reduce odor bearing gases . . .
10 to a reasonable minimum."

11 VII.

12 As a result of response to specific civilian complaints and as a
13 result of patrolling the area near the plant, respondent's inspectors
14 served appellant with 22 Notices of Violation of Section 9.12 of
15 respondent's Regulation I. In each case, Notices of Civil Penalties,
16 each in the amount of \$250.00, subsequently were served on appellant.
17 The dates of the alleged violations and respondent's identifying numbers
18 for the attendant civil penalties are as follows:

19	July 6, 1972,	Notice of Civil Penalty	329
20	July 19, 1972,	" " " "	354
21	July 20, 1972,	" " " "	355
22	July 21, 1972,	" " " "	357
23	August 5, 1972,	" " " "	399
24	August 7, 1972,	" " " "	385
25	August 8, 1972,	" " " "	386
26	August 21, 1972,	" " " "	408

1	August 24, 1972,	Notice of Civil Penalty	412
2	August 29, 1972,	" " " "	420
3	September 6, 1972,	" " " "	432
4	September 6, 1972,	" " " "	433
5	September 15, 1972,	" " " "	452
6	September 19, 1972,	" " " "	460
7	September 19, 1972,	" " " "	463
8	September 22, 1972,	" " " "	458
9	September 26, 1972,	" " " "	462
10	September 27, 1972,	" " " "	459
11	September 28, 1972,	" " " "	461
2	October 10, 1972,	" " " "	488
13	October 12, 1972,	" " " "	494
14	October 13, 1972,	" " " "	495

VIII.

Appellant, unable to obtain prompt delivery of an odor control apparatus which it had planned to install temporarily at its Puyallup plant and then move, in 1973, to its contemplated new facility at the Port of Tacoma, began in October, 1972, to install a wet scrubber system which it believes will reduce odor from its Puyallup plant. Appellant does not have sufficient funds to finance an "ideal" odor elimination system for its final year of operation at the Puyallup site.

From these Findings, the Pollution Control Hearings Board comes to these

1 CONCLUSIONS

2 I.

3 Appellant was in violation of Sections 1.01 and 9.12 of respondent's
4 Regulation I on the 22 dates detailed in Findings of Fact VII.

5 II.

6 In view of appellant's failure to take any immediate corrective
7 action to reduce odors emanating from its plant during most of the
8 period covered by the months of July, August, September and October,
9 1972, the maximum civil penalties of \$250.00 each, detailed in Findings
10 of Fact VII, appear to be reasonable.

11 III.

12 However, immediate collection of \$5,500.00, being the total amount
13 of the 22 civil penalties, would not get to the heart of this matter
14 which is keeping in business this payroll-producing plant under
15 circumstances which nearby residents can tolerate until such time during
16 1973 when it will cease to operate in Puyallup and will be moved to a
17 modern, odor-controlled facility on Port of Tacoma property. The
18 Pollution Control Hearings Board, therefore, proposes to retain
19 jurisdiction of this matter under terms of an interim order which is
20 designed both to give appellant an opportunity to stay in business and
21 to protect residents of the plant area from overbearing odors.

22 THEREFORE, the Pollution Control Hearings Board makes this

23 INTERIM ORDER

24 I.

25 The Pollution Control Hearings Board retains jurisdiction of this
26 matter until such time as it feels a final order should be issued.

27 FINDINGS OF FACT, CONCLUSIONS
AND INTERIM ORDER

1 II.

2 Appellant's appeals to the 22 civil penalties detailed in
3 Findings of Fact VII are denied.

4 III.

5 Appellant forthwith is directed to pay respondent the sum of \$250.00.

6 IV.

7 The balance of the total sum of the civil penalties, being
8 \$5,250.00, is suspended under the following terms:

- 9 (a) Effective March 1, 1973--at which time all exceptions to this
10 Order shall have been resolved and by which time appellant
11 will have had ample time to complete installation and testing
12 of its wet scrubber system at its Puyallup plant--and until
13 December 31, 1973 or until appellant's operation is moved to
14 property of the Port of Tacoma, whichever date comes first,
15 appellant shall incur no more than three violations of
16 Sections 1.01 and/or 9.12 of respondent's Regulation I as
17 sustained by the Pollution Control Hearings Board in a process
18 hereinafter described.
- 19 (b) After March 1, 1973, respondent forthwith shall serve on the
20 Pollution Control Hearings Board copies of any alleged
21 violations of Sections 1.01 and/or 9.12 of respondent's
22 Regulation I which it shall find it necessary to serve on
23 appellant in order to protect the nearby residents of the
24 plant from weighty, obnoxious odors emanating from the plant.
- 25 (c) Within ten days of receipt of such copies of alleged violations,
26 or as soon thereafter as the hearings schedule of the Pollution

Control Hearings Board permits, a reopening of this formal hearing will be held to ascertain whether the Pollution Control Hearings Board sustains the alleged violations. Both appellant and respondent, by assenting to this Order, hereby waive any technicalities as to notice of hearing and hereby agree to participate in such reopening of this formal hearing as outlined above.

(d) It shall be the sole responsibility of appellant to operate its Puyallup plant, or to curtail its operations there, from March 1, 1973 until December 31, 1973, or until it ceases operation at Puyallup, whichever date comes first, so that it does not incur four more violations of Sections 1.01 and/or 9.12 of respondent's Regulation I as sustained by the Pollution Control Hearings Board as detailed in (c) immediately above.

(e) If, between March 1, 1973 and December 31, 1973, or until it ceases operation at Puyallup, whichever date comes first, appellant succeeds in having no more than three "sustained" violations of Sections 1.01 and/or 9.12 of respondent's Regulation I, as specified in (c) above, the unpaid balance of the civil penalties in this matter, being the sum of \$5,250.00, will be cancelled.

(f) If, prior to December 31, 1973, or until it ceases operation at Puyallup, whichever date comes first, appellant incurs a fourth "sustained" violation of Sections 1.01 and/or 9.12 of respondent's Regulation I, as specified in (c) above, the

unpaid balance of the civil penalties in this matter, being the sum of \$5,250.00 will be sustained and subject to immediate collection by respondent.

(g) If respondent determines that appellant's equipment is not reasonably controlling odor emissions, respondent first must serve appellant with written notice of this determination. Upon receipt of such written notice, appellant thereafter may process only that material which was on hand at the time of receipt of the written notice and in no event for more than 24 hours after having received the notice. Appellant will continue to operate thereafter at its own peril.

(h) Breakdowns resulting from corrosion caused by the use of chlorine shall not be included in the purview of Section 9.16 of respondent's Regulation I.

(i) Hearing on all appealed alleged violations served on appellant during the period from January 1, 1973 to March 1, 1973 shall be had in conjunction with the fourth "formula" hearing, if any, which is held in this matter. The purpose of hearing the violations during the period from January 1, 1973 to March 1, 1973 shall be to determine the final amount of the civil penalties du

DONE at Olympia, Washington this 28th day of February, 1973.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

James T. Sheehy
JAMES T. SHEEHY, Member

Mr. W. A. Gissberg became a member of this Board on January 15, 1973 and does not care to participate in this matter which he did not hear originally.

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STATE OF WASHINGTON

IN THE MATTER OF)
JOHNSON MANUFACTURING)
COMPANY, INC.,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB Nos. 168, 182, 198 and 210

SUBSEQUENT HEARING NO. 2
FINDINGS OF FACT,
CONCLUSION AND ORDER

This matter, Subsequent Hearing No. 2 under terms of the Interim Order, came before all members of the Pollution Control Hearings Board as a formal hearing in the Board's office at Lacey, Washington, at 10:00 a.m. May 25, 1973. At issue was whether the Board would "sustain" under terms of the Interim Order Notice of Violation No. 8119, as amended by Notice of Violation No. 7727.

Appellant appeared through Frederick P. Smith, respondent through its counsel, Keith D. McGoffin.

1 Witnesses were sworn and testified. Exhibits were offered and
2 admitted.

3 From testimony heard, exhibits examined and arguments of counsel
4 considered, the Pollution Control Hearings Board makes these

5 FINDINGS OF FACT

6 I.

7 In the early evening of April 25, 1973, there was emitted an
8 intense, obnoxious odor from appellant's rendering plant at
9 9119 Fruitland Avenue, Puyallup, Pierce County.

10 II.

11 In response to telephoned complaints, an inspector on respondent's
12 staff made a personal inspection of the area near appellant's plant
13 between 8:00 and 9:00 p.m. on April 25, 1973. He served appellant with
14 Notice of Violation No. 8119 (later corrected as to date by Notice of
15 Violation No. 7727), citing Section 9.12 of respondent's Regulation I.

16 III.

17 Section 9.12 of respondent's Regulation I requires that effective
18 control apparatus and measures shall be installed and operated to keep
19 odor-bearing gases "to a reasonable minimum."

20 IV.

21 A limited number of residents complained and testified. The
22 inspector made a thorough patrol of the vicinity near appellant's plant
23 and found no odor in some areas. Compared to the widespread diffusion
24 of the odor last summer, the odor on April 25, 1973, was confined to a
25 relatively small area.

26 V.

27 Appellant's odor-control equipment was functioning properly the

1 evening of April 25, 1973.

2 VI.

3 Appellant was not operating its plant at capacity and has refused
4 to accept some rendering material in an effort to stay in compliance
5 with the Interim Order issued in this matter.

6 From these Findings, the Pollution Control Hearings Board comes
7 to these

8 CONCLUSIONS

9 I.

10 There was some justification for issuance of Notice of Violation
11 No. 8119. There was an obnoxious odor emanating from appellant's
12 plant on April 25, 1973. But it was restricted in its coverage of the
13 nearby residential area. The limited number of residents who
14 complained and testified managed to escape the intensity of the odor
15 by shutting the doors and windows of their homes. It was a warm night
16 and this gave them some discomfort in sleeping.

17 II.

18 On the other hand, appellant's odor-control equipment--admittedly
19 sub-standard--was operating and functioning properly. The plant was
20 operating on a "break-even" curtailed production basis in an effort,
21 costly to appellant, to stay in business and yet be in compliance
22 with the Interim Order.

23 III.

24 The question, then is whether odor-bearing gases were being kept
25 "to a reasonable minimum." The Board finds this an extremely close
26 question to answer. In this particular instance, however, the Board

1 feels the scales tip slightly in favor of appellant.

2 Therefore, the Pollution Control Hearings Board comes to this

3 ORDER

4 Notice of Violation No. 8119, as amended by Notice of Violation
5 No. 7727, is not "sustained" under terms of the Interim Order.

6 DONE at Lacey, Washington this 5th day of June, 1973.

7 POLLUTION CONTROL HEARINGS BOARD

8 Walt Woodward
9 WALT WOODWARD, Chairman

10 W. A. Gissberg
11 W. A. GISSBERG, Member

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13 JAMES T. SHEEHY, Member
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Respondent.)

PCHB Nos. 168, 182, 198 and 210

SUBSEQUENT HEARING NO. 1
FINDINGS OF FACT,
CONCLUSION AND ORDER

This matter, Subsequent Hearing No. 1 under terms of the Interim Order, came before all members of the Pollution Control Hearings Board as a formal hearing in the Tacoma law offices of Burkey, Marsico, Roval and McGoffin at 10:00 a.m., April 23, 1973. At issue was whether the Board would "sustain" under terms of the Interim Order Notice of Violation No. 8115, issued by respondent to appellant on April 2, 1973.

Appellant appeared through Frederick P. Smith, respondent through

1 its counsel, Keith D. McGoffin.

2 Witnesses were sworn and testified. Exhibits were offered and
3 admitted.

4 From testimony heard and exhibits examined, the Pollution Control
5 Hearings Board makes these

6 FINDINGS OF FACT

7 I.

8 From about 7:00 to 10:00 p.m. on April 2, 1973, there was emitted a
9 strong, nauseating, repugnant and otherwise obnoxious odor from appellant's
10 rendering plant at 9119 Fruitland Avenue, Puyallup, Pierce County. Most
11 persons who were subjected to the odor did not detect or complain of
12 chlorine as the cause of their discomfort.

13 II.

14 In response to several telephoned complaints and after an inspector
15 on respondent's staff made a personal inspection of the area near appellant
16 plant at 9:00 p.m., April 2, 1973, respondent served appellant with Notice
17 of Violation No. 8115, citing Section 9.12 of respondent's Regulation I.

18 III.

19 Section 9.12 of respondent's Regulation I requires that effective
20 control apparatus and measures shall be installed and operated to keep
21 odor-bearing gases "to a reasonable minimum."

22 From these Findings, the Pollution Control Hearings Board comes to
23 this

24 CONCLUSION

25 Appellant was in violation of Section 9.12 of respondent's Regulation I
26 on April 2, 1973, as alleged in Notice of Violation No. 8115. Appellant's

1 control apparatus was functioning and there was no breakdown in the
2 chlorine-control system; odor-bearing gases being emitted simply were
3 not held "to a reasonable minimum."

4 From this Conclusion, the Pollution Control Hearings Board issues
5 this

6 ORDER

7 Notice of Violation No. 8115 is "sustained" under terms of the
8 Interim Order.

9 DONE at Lacey, Washington this 10th day of May, 1973.

10 POLLUTION CONTROL HEARINGS BOARD

11 Walt Woodward
12 WALT WOODWARD, Chairman

13 W. A. Gissberg
14 W. A. GISSBERG, Member

15 James T. Sheehy
16 JAMES T. SHEEHY, Member

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SUBSEQUENT HEARING NO. 2
FINDINGS OF FACT,
CONCLUSION AND ORDER

This matter, Subsequent Hearing No. 2 under terms of the Interim Order, came before all members of the Pollution Control Hearings Board as a formal hearing in the Board's office at Lacey, Washington, at 10:00 a.m. May 25, 1973. At issue was whether the Board would "sustain" under terms of the Interim Order Notice of Violation No. 8119, as amended by Notice of Violation No. 7727.

Appellant appeared through Frederick P. Smith, respondent through its counsel, Keith D. McGoffin.

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8 intense, obnoxious odor from appellant's rendering plant at
9 9119 Fruitland Avenue, Puyallup, Pierce County.

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12 staff made a personal inspection of the area near appellant's plant
13 between 8:00 and 9:00 p.m. on April 25, 1973. He served appellant with
14 Notice of Violation No. 8119 (later corrected as to date by Notice of
15 Violation No. 7727), citing Section 9.12 of respondent's Regulation I.

16 III.

17 Section 9.12 of respondent's Regulation I requires that effective
18 control apparatus and measures shall be installed and operated to keep
19 odor-bearing gases "to a reasonable minimum."

20 IV.

21 A limited number of residents complained and testified. The
22 inspector made a thorough patrol of the vicinity near appellant's plant
23 and found no odor in some areas. Compared to the widespread diffusion
24 of the odor last summer, the odor on April 25, 1973, was confined to
25 relatively small area.

26 V.

27 Appellant's odor-control equipment was functioning properly the

1 evening of April 25, 1973.

2 VI.

3 Appellant was not operating its plant at capacity and has refused
4 to accept some rendering material in an effort to stay in compliance
5 with the Interim Order issued in this matter.

6 From these Findings, the Pollution Control Hearings Board comes
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8 CONCLUSIONS

9 I.

10 There was some justification for issuance of Notice of Violation
11 No. 8119. There was an obnoxious odor emanating from appellant's
12 plant on April 25, 1973. But it was restricted in its coverage of the
13 nearby residential area. The limited number of residents who
14 complained and testified managed to escape the intensity of the odor
15 by shutting the doors and windows of their homes. It was a warm night
16 and this gave them some discomfort in sleeping.

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18 On the other hand, appellant's odor-control equipment--admittedly
19 sub-standard--was operating and functioning properly. The plant was
20 operating on a "break-even" curtailed production basis in an effort,
21 costly to appellant, to stay in business and yet be in compliance
22 with the Interim Order.

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24 The question, then is whether odor-bearing gases were being kept
25 "to a reasonable minimum." The Board finds this an extremely close
26 question to answer. In this particular instance, however, the Board

1 feels the scales tip slightly in favor of appellant.

2 Therefore, the Pollution Control Hearings Board comes to this

3 ORDER

4 Notice of Violation No. 8119, as amended by Notice of Violation
5 No. 7727, is not "sustained" under terms of the Interim Order.

6 DONE at Lacey, Washington this 5th day of June, 1973.

7 POLLUTION CONTROL HEARINGS BOARD

8 Walt Woodward
9 WALT WOODWARD, Chairman

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13 JAMES T. SHEEHY, Member

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Appellant appeared through Frederick P. Smith, respondent through

1 its counsel, Keith D. McGoffin.

2 Witnesses were sworn and testified. Exhibits were offered and
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12 chlorine as the cause of their discomfort.

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19 Section 9.12 of respondent's Regulation I requires that effective
20 control apparatus and measures shall be installed and operated to keep
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22 From these Findings, the Pollution Control Hearings Board comes to
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24 CONCLUSION

25 Appellant was in violation of Section 9.12 of respondent's Regulation I
26 on April 2, 1973, as alleged in Notice of Violation No. 8115. Appellar

1 control apparatus was functioning and there was no breakdown in the
2 chlorine-control system; odor-bearing gases being emitted simply were
3 not held "to a reasonable minimum."

4 From this Conclusion, the Pollution Control Hearings Board issues
5 this

6 ORDER

7 Notice of Violation No. 8115 is "sustained" under terms of the
8 Interim Order.

9 DONE at Lacey, Washington this 15th day of May, 1973.

10 POLLUTION CONTROL HEARINGS BOARD

11 Walt Woodward
WALT WOODWARD, Chairman

13 W. A. Gissberg
14 W. A. GISSBERG, Member

15 James T. Sweeney
16 JAMES T. SWEENEY, Member

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7 I.

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9 Puyallup, Pierce County. It uses animal offal in a heating process
10 which produces tallow for export to Japan. The firm, in business at that
11 location since 1925, was acquired by its present owners in 1970. They
12 have a lease on the plant which expires in December, 1973. The plant's
13 location, in a draw near some hills on the west side of Puyallup,
14 originally was in a sparsely settled wooded area; in the passing years,
15 the area has become residential; homes have been built close to the
16 plant and an elementary public school is located some 500 yards north of
17 the plant.

18 II.

19 There always has been a community odor associated with the plant.
20 Under the former ownership, when this odor became overbearing to nearby
21 residents, processing of offal was curtailed or ceased. Under the new
22 ownership, production was doubled to the processing of about 35,000
23 pounds of offal a day.

24 III.

25 Beginning in January, 1971, respondents began to receive an
26 increasing number of complaints from nearby residents concerning odors

27 FINDINGS OF FACT, CONCLUSIONS
AND INTERIM ORDER

1 emanating from the plant. At the request of respondent, appellant, in
2 April, 1971, submitted a schedule for the installation of an odor
3 reducing scrubber system with an original compliance date of September 1,
4 1972, later extended to December 1, 1972. In subsequent discussions
5 with respondent, appellant agreed that the ultimate solution of the
6 problem was removal of the operation to a new plant equipped with
7 acceptable odor reduction devices, on property of the Port of Tacoma.
8 Appellant took steps to accomplish this move prior to expiration of its
9 Puyallup location lease in December, 1973. Installation of odor
10 reducing equipment at the Puyallup site, however, was not activated
11 immediately.

12 IV.

13 During the months of July, August, September and October, 1972,
14 persons living near the plant found odors emanating from the plant to
15 be "nauseating," "putrid," "like badly burned flesh," "obnoxious,"
16 "sickening," "very difficult to live with," "suffocating," "heavy and
17 greasy," or impossible "to live with another summer." They complained
18 regularly, often daily, and sometimes several times a day to respondent.
19 Despite the warm summer weather, they closed doors and windows in their
20 homes to shut out the odor, thus making it difficult to sleep at night.

21 V.

22 Responding to these civilian complaints, respondent dispatched four
23 of its inspectors to the area on various days and nights during the
24 months of July, August, September and October, 1972. These inspectors
25 found the odor from the plant to be "a dead animal smell I couldn't
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stand for any length of time," "a rotten smell . . . I wished I was
some place else," "an odor strong enough to want to get away from," and
"strong enough to cause one to avoid it."

VI.

Section 1.01 of respondent's Regulation I declares that the public
policy of respondent includes the fostering of the "comfort" of the
inhabitants of its jurisdictional area which embraces Pierce County.
Section 9.12(a) of respondent's Regulation I requires the installation
of "effective control apparatus . . . to reduce odor bearing gases . . .
to a reasonable minimum."

VII.

As a result of response to specific civilian complaints and as a
result of patrolling the area near the plant, respondent's inspectors
served appellant with 22 Notices of Violation of Section 9.12 of
respondent's Regulation I. In each case, Notices of Civil Penalties,
each in the amount of \$250.00, subsequently were served on appellant.
The dates of the alleged violations and respondent's identifying numbers
for the attendant civil penalties are as follows:

July 6, 1972,	Notice of Civil Penalty	329
July 19, 1972,	" " " "	354
July 20, 1972,	" " " "	355
July 21, 1972,	" " " "	357
August 5, 1972,	" " " "	399
August 7, 1972,	" " " "	385
August 8, 1972,	" " " "	386
August 21, 1972,	" " " "	408

1	August 24, 1972,	Notice of Civil Penalty	412
2	August 29, 1972,	" " " "	420
3	September 6, 1972,	" " " "	432
4	September 6, 1972,	" " " "	433
5	September 15, 1972,	" " " "	452
6	September 19, 1972,	" " " "	460
7	September 19, 1972,	" " " "	463
8	September 22, 1972,	" " " "	458
9	September 26, 1972,	" " " "	462
10	September 27, 1972,	" " " "	459
	September 28, 1972,	" " " "	461
12	October 10, 1972,	" " " "	488
13	October 12, 1972,	" " " "	494
14	October 13, 1972,	" " " "	495

VIII.

Appellant, unable to obtain prompt delivery of an odor control apparatus which it had planned to install temporarily at its Puyallup plant and then move, in 1973, to its contemplated new facility at the Port of Tacoma, began in October, 1972, to install a wet scrubber system which it believes will reduce odor from its Puyallup plant. Appellant does not have sufficient funds to finance an "ideal" odor elimination system for its final year of operation at the Puyallup site.

From these Findings, the Pollution Control Hearings Board comes to these

1 CONCLUSIONS

2 I.

3 Appellant was in violation of Sections 1.01 and 9.12 of respondent'
4 Regulation I on the 22 dates detailed in Findings of Fact VII.

5 II.

6 In view of appellant's failure to take any immediate corrective
7 action to reduce odors emanating from its plant during most of the
8 period covered by the months of July, August, September and October,
9 1972, the maximum civil penalties of \$250.00 each, detailed in Findings
10 of Fact VII, appear to be reasonable.

11 III.

12 However, immediate collection of \$5,500.00, being the total amou
13 of the 22 civil penalties, would not get to the heart of this matter
14 which is keeping in business this payroll-producing plant under
15 circumstances which nearby residents can tolerate until such time during
16 1973 when it will cease to operate in Puyallup and will be moved to a
17 modern, odor-controlled facility on Port of Tacoma property. The
18 Pollution Control Hearings Board, therefore, proposes to retain
19 jurisdiction of this matter under terms of an interim order which is
20 designed both to give appellant an opportunity to stay in business and
21 to protect residents of the plant area from overbearing odors.

22 THEREFORE, the Pollution Control Hearings Board makes this

23 INTERIM ORDER

24 I.

25 The Pollution Control Hearings Board retains jurisdiction of this
26 matter until such time as it feels a final order should be issued.

II.

Appellant's appeals to the 22 civil penalties detailed in Findings of Fact VII are denied.

III.

Appellant forthwith is directed to pay respondent the sum of \$250.00

IV.

The balance of the total sum of the civil penalties, being \$5,250.00, is suspended under the following terms:

(a) Effective March 1, 1973--at which time all exceptions to this Order shall have been resolved and by which time appellant will have had ample time to complete installation and testing of its wet scrubber system at its Puyallup plant--and until December 31, 1973 or until appellant's operation is moved to property of the Port of Tacoma, whichever date comes first, appellant shall incur no more than three violations of Sections 1.01 and/or 9.12 of respondent's Regulation I as sustained by the Pollution Control Hearings Board in a process hereinafter described.

(b) After March 1, 1973, respondent forthwith shall serve on the Pollution Control Hearings Board copies of any alleged violations of Sections 1.01 and/or 9.12 of respondent's Regulation I which it shall find it necessary to serve on appellant in order to protect the nearby residents of the plant from weighty, obnoxious odors emanating from the plant.

(c) Within ten days of receipt of such copies of alleged violations or as soon thereafter as the hearings schedule of the Pollution

Control Hearings Board permits, a reopening of this formal hearing will be held to ascertain whether the Pollution Control Hearings Board sustains the alleged violations. Both appellant and respondent, by assenting to this Order, hereby waive any technicalities as to notice of hearing and hereby agree to participate in such reopening of this formal hearing as outlined above.

(d) It shall be the sole responsibility of appellant to operate its Puyallup plant, or to curtail its operations there, from March 1, 1973 until December 31, 1973, or until it ceases operation at Puyallup, whichever date comes first, so that it does not incur four more violations of Sections 1.01 and/or 9.12 of respondent's Regulation I as sustained by the Pollution Control Hearings Board as detailed in (c) immediately above.

(e) If, between March 1, 1973 and December 31, 1973, or until it ceases operation at Puyallup, whichever date comes first, appellant succeeds in having no more than three "sustained" violations of Sections 1.01 and/or 9.12 of respondent's Regulation I, as specified in (c) above, the unpaid balance of the civil penalties in this matter, being the sum of \$5,250.00 will be cancelled.

(f) If, prior to December 31, 1973, or until it ceases operation at Puyallup, whichever date comes first, appellant incurs a fourth "sustained" violation of Sections 1.01 and/or 9.12 of respondent's Regulation I, as specified in (c) above, the

unpaid balance of the civil penalties in this matter, being the sum of \$5,250.00 will be sustained and subject to immediate collection by respondent.

(g) If respondent determines that appellant's equipment is not reasonably controlling odor emissions, respondent first must serve appellant with written notice of this determination. Upon receipt of such written notice, appellant thereafter may process only that material which was on hand at the time of receipt of the written notice and in no event for more than 24 hours after having received the notice. Appellant will continue to operate thereafter at its own peril.

(h) Breakdowns resulting from corrosion caused by the use of chlorine shall not be included in the purview of Section 9.16 of respondent's Regulation I.

(i) Hearing on all appealed alleged violations served on appellant during the period from January 1, 1973 to March 1, 1973 shall be had in conjunction with the fourth "formula" hearing, if any, which is held in this matter. The purpose of hearing the violations during the period from January 1, 1973 to March 1, 1973 shall be to determine the final amount of the civil penalties.

DONE at Olympia, Washington this 28th day of February, 1973.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

James T. Sheehy
JAMES T. SHEEHY, Member

Mr. W. A. Gissberg became a member of this Board on January 15, 1973 and does not care to participate in this matter which he did not hear originally.

#290

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

JOHNSON MANUFACTURING COMPANY)	
Appellant,)	
vs)	PCHB NOS 168, 132, 198 and 210
PUGET SOUND AIR POLLUTION CONTROL AGENCY,)	
Respondent)	STIPULATED ORDER OF TERMINATION

THIS MATTER coming on for hearing before the above-entitled Board on the Stipulated Motion of the Appellant and the Respondent for an Order terminating the hearing before the Pollution Control Hearings Board, and the Board being fully advised that the Appellant, Johnson Manufacturing Company, has terminated its Puyallup operation at the Fruitland Avenue rendering plant and that the new modern plant in the Tacoma Tideflats area is in full operation, that the Appellant has met the terms and conditions of the Order and all parties being fully advised, now, therefore, it is hereby

O R D E R E D

That the balance of the civil penalties in the sum of Five Thousand Two Hundred and Fifty (\$5,250 00) Dollars be entirely suspended and the matter entirely disposed of and

STIPULATED ORDER OF
TERMINATION -1

BURKEY, MARSICO, ROVAL & MCGOFFIN
812 SOUTH TACOMA AVENUE
TACOMA WASH 98408
(206) 272 9808

terminated and the file closed

DONE IN OLYMPIA, WASHINGTON this 31st day of May, 1974

POLLUTION CONTROL HEARINGS BOARD

By Walt Woodward
Walt Woodward, Chairman

W A Gissberg
W A Gissberg, Member

Mary Ellen McCaffree
Mary Ellen McCaffree, Member

Approved as to form

PUGET SOUND AIR POLLUTION CONTROL AGENCY

By Keith D McGoffin
Keith D McGoffin
Attorney for Respondent

Approved as to Form and Notice of
Presentment Waived

JOHNSON MANUFACTURING COMPANY

By Frederick P Smith
Frederick P Smith
Attorney for Appellant

STIPULATED ORDER OF
TERMINATION -2

BURKEY, MARSICO, ROYAL & MCGOFFIN
818 SOUTH YAKIMA AVENUE
TACOMA WASH 98408
(206) 478 8308